

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOWN OF WEST TERRE HAUTE, IN

Defendant.

Civil Action No. 203-CV-0206 JDT-WGH

CASE MANAGEMENT PLAN

I. Parties and Representatives

A. Plaintiff United States:

Counsel from the Civil Rights Division of the U.S. Department of Justice will have primary responsibility for handling this matter on behalf of the United States.

Benjamin Blustein [DC Bar No. 418930]

Sara R. Lewenberg [Mass. Bar No. 634257]

Attorneys

U.S. Department of Justice

Civil Rights Division, Employment Litigation Section

U.S. Mail Address:

950 Pennsylvania Avenue, N.W.

Patrick Henry Building, Room 4908

Washington, D.C. 20530

Telephone: (202) 514-4073

Facsimile: (202) 514-1005

E-mail: Benjamin.Blustein@usdoj.gov

Sara.Lewenberg@usdoj.gov

Overnight Mail Address:

601 D Street, N.W.

Room 4908

Washington, D.C. 20004

Sue Hendricks Bailey

Assistant United States Attorney

Southern District of Indiana

10 West Market Street, Suite 2100

Indianapolis, IN 46204

Telephone: (317) 226-6333

Facsimile: (317) 226-5027

E-Mail: sue.bailey@usdoj.gov

B. Defendant Town of West Terre Haute:

Jeremy M. Dilts, Esq./#22335-49
Edward J. Liptak, Esq./#9821-02
Miller Carson Boxberger & Murphy, LLP
3100 John Hinkle Place, Suite 106
Bloomington, IN 47408
(812) 333-1225 phone
(812) 333-1925 fax
jmd@mcbm.com
eil@mcbm.com

II. Synopsis of the Case

A. Plaintiff United States:

The United States alleges that the Town of West Terre Haute (“Town”) unlawfully discriminated against former employee Jana Buchanan in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, by subjecting her to sexual harassment that resulted in a hostile work environment and her constructive discharge. Specifically, the United States alleges that the former head of the Town’s Police Department, Harry W. Hughes, repeatedly subjected Ms. Buchanan to harassing and unwelcome conduct of a sexual nature, including, but not limited to, unwanted touching, obscene gestures, lewd comments about her sexual partners, crude comments about her body, and threatening remarks.

The Town is a covered “employer” under Title VII because it had “fifteen or more employees for each working day in each of twenty or more calendar weeks” in the years in which the alleged discrimination occurred or the preceding calendar year. 42 U.S.C. § 2000e(b). The Town filed certified reports with the State of Indiana pursuant to Chapter 100, Acts of 1943, indicating that the Town employed well over 15 individuals during each year from 1998 through 2000.

B. Defendant Town of West Terre Haute:

The Complaint, filed on July 11, 2003, alleges a violation of Jana Buchanan’s civil rights under Title VII based on the alleged sexually-hostile work environment in the West Terre Haute Police Department.

Town contends that (1) Ms. Buchanan was not subjected to any sexual

harassment, (2) that she has not sustained any economic damages because she left her employment for a higher-paying job, and (3) that the Town did not have enough employees to be considered an “employer” under 42 U.S.C. § 2000(e).

III. Pre-Trial Pleadings and Disclosures¹

- A. The parties shall serve their FED. R. CIV. P. 26 initial disclosures on or before October 11, 2003, and shall at that time file a notice with the Court that such disclosures have been served. [Note: Fed. R. Civ. P. 26(a)(1)(E) permits the parties to object to making initial disclosures or to stipulate to a different deadline for making such disclosures based upon the circumstances of the action. If any objection and/or stipulation is made to initial disclosures in the CMP, the parties shall briefly state the circumstances justifying their respective positions.]
- B. Plaintiff shall file preliminary witness and exhibit lists on or before November 11, 2003.
- C. Defendant shall file preliminary witness and exhibit lists on or before December 11, 2003.
- D. All motions for leave to amend pleadings and/or to join additional parties shall be filed on or before November 11, 2003.
- E. Plaintiff shall serve Defendant (but not file with the Court) a statement of special damages, if any, and make a settlement demand, on or before November 11, 2003. Defendant shall serve on Plaintiff (but not file with the Court) a response thereto within 15 days after receipt of the demand.
- F. Plaintiff shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by FED. R. CIV. P. 26(a)(2)(B) on or before **[Plaintiff proposes: January 11, 2004; Defendant proposes: August 11, 2004]**. However, if Plaintiff uses expert witness testimony at the summary judgment stage, such disclosures must be made no later than 60 days prior to the summary judgment deadline.
- G. Defendant shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by FED. R. CIV. P. 26(a)(2)(B) within 30 days after Plaintiff serves its expert witness disclosure; or if none, Defendant shall make its expert disclosure on or before **[Plaintiff proposes: February 11, 2004;**

¹ Those dates and deadlines regarding which the parties were unable to reach agreement appear in bold. The parties’ respective proposed pre-trial schedules are summarized in the chart set forth in Attachment A to this Case Management Plan.

Defendant proposes: September 11, 2004]. However, if Defendant uses expert witness testimony at the summary judgment stage, such disclosures must be made no later than 30 days prior to the summary judgment deadline.

- H. Any party who wishes to limit or preclude expert testimony at trial shall file any such objections no later than 60 days before trial. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their responsive brief within the briefing schedule established by Local Rule 56.1.
- I. All parties shall file and serve their final witness and exhibit lists on or before **[Plaintiff proposes: February 11, 2004; Defendant proposes: September 11, 2004].**
- J. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.

IV. Discovery and Dispositive Motions

Due to the time and expense involved in conducting expert witness depositions and other discovery, as well as preparing and resolving dispositive motions, the Court requires counsel to use the CMP as an opportunity to seriously explore whether this case is appropriate for such motions (including specifically motions for summary judgment), whether expert witnesses will be needed, and how long discovery should continue. To this end, counsel must select the track set forth below that they believe best suits this case. If the parties are unable to agree on a track, the parties must: (1) state this fact in the CMP where indicated below; (2) indicate which track each counsel believes is most appropriate; and (3) provide a brief statement supporting the reasons for the track each counsel believes is most appropriate. If the parties are unable to agree on a track, the Court will pick the track it finds most appropriate, based upon the contents of the CMP or, if necessary, after receiving additional input at an initial pretrial conference.

- A. Does any party believe that this case may be appropriate for summary judgment or other dispositive motion? If yes, the party(ies) that expect to file such a motion must provide a brief statement of the factual and/or legal basis for such a motion. [Note: A statement such as, "Defendant will seek summary judgment because no material facts are in dispute," is insufficient. Such a statement does not indicate to the Court that the parties used the CMP as an opportunity to seriously explore whether this case is appropriate for summary judgment or other dispositive motion. However, the failure to set forth a basis for a dispositive motion in the CMP will not bar a party from raising this argument at the motions stage.]

Plaintiff United States:

No. The United States submits that this case is not appropriate for summary judgment because Defendant Town of West Haute disputes that Jana Buchanan was subjected to sexual harassment and, therefore, a jury must determine contested factual matters. To the extent that Defendant asserts that it may file a dispositive motion based upon its contention that it may not be an “employer” under Title VII because it had fewer than 15 employees during the relevant period, extensive discovery on this issue is not required. Therefore, the United States proposes that any dispositive motions be filed by January 11, 2004.

Defendant Town of West Terre Haute:

Yes, the Town of West Terre Haute anticipates a possible dispositive motion based on the inapplicability of Title VII requirements to it. The Town may not be an “employer” as defined by Title VII.

B. Select the track that best suits this case:

X (Plaintiff) Track 1: All discovery shall be completed² by March 30, 2004, pursuant to the proposed schedule set forth in Attachment A. [Note: The United States requests a shorter discovery track because the factual allegations are straightforward, and expert witnesses are not anticipated. If Defendant intends to file a dispositive motion based upon its assertion that may not be an “employer” under Title VII, that motion shall be filed by January 11, 2004.]

X (Def.) Track 2: Dispositive motions are expected and shall be filed by June 11, 2004; non-expert witness discovery and discovery relating to liability issues shall be completed by May 11, 2004; expert witness discovery and discovery relating to damages shall be completed by November 11, 2004. [Note: The Court expects this will be the typical track when dispositive motions are anticipated.]

² The term “completed,” as used in Section III.B, means that counsel must serve their discovery requests in sufficient time to receive responses before this deadline. Counsel may not serve discovery requests within the 30-day period before this deadline unless they seek leave of Court to serve a belated request and show good cause for the same. In such event, the proposed belated discovery request shall be filed with the motion, and the opposing party will receive it with service of the motion but need not respond to the same until such time as the Court grants the motion.

_____ Track 3: Dispositive motions are expected and shall be filed no later than _____ [no later than 11 months from Anchor Date]; expert witness discovery that may be necessary at the dispositive motions stage shall be completed by _____ [no later than 7-10 months from Anchor Date]; all remaining discovery shall be completed by [no later than 12-16 months from Anchor Date]. [Note: The Court expects that this will not be the typical track when dispositive motions are anticipated.]

_____ Track 4: Dispositive motions shall be filed by _____ [not later than 13 months from the Anchor Date]; non-expert discovery shall be completed by _____; expert witness discovery shall be completed by _____. [Note: The Court provides Track 4 as an open option because it recognizes that there may be unusual cases for which special circumstances necessitate additional flexibility. However, the Court has found that Tracks 1-3 are appropriate in the large majority of cases, and therefore the parties must briefly state below the special circumstances justifying a departure from Tracks 1-3.]

V. Pre-Trial/Settlement Conferences

Plaintiff United States:

The United States is amenable to an initial conference with the Magistrate Judge or District Judge, either in person or by telephone, to explore ways to resolve this matter by settlement and minimize the costs associated with litigation.

Defendant Town of West Terre Haute:

Should Defendant's anticipated dispositive motion not be successful, the parties believe a settlement conference with the Magistrate would be helpful.

VI. Trial Date

Plaintiff United States:

The presumptive trial date is January 2005, which is 18 months from the Anchor Date. However, the United States requests a shorter discovery track and earlier trial date for the reasons set forth in Part IV. The United States requests a trial date in May 2004. The

trial is by jury and is anticipated to take 2-3 days.

Defendant Town of West Terre Haute:

The presumptive trial date is January, 2005. The trial is by jury and is anticipated to take 2-3 days.

VII. Referral to Magistrate Judge

It is the long-standing policy and practice of the Civil Rights Division of the Department of Justice in prosecuting actions brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq., to have the case assigned to a District Judge for trial rather than consent to trial by a Magistrate Judge. Therefore, Plaintiff does not consent to refer this matter to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and FED. R. CIV. P. 73.

VIII. Required Pre-Trial Preparation

A. **TWO WEEKS BEFORE THE FINAL PRE-TRIAL CONFERENCE**, the parties shall:

1. File a list of witnesses who are expected to be called to testify at trial.
2. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.
3. Submit all stipulations of fact in writing to the Court. Stipulations are always encouraged so that at trial counsel can concentrate on relevant contested facts.
4. A party who intends to offer any depositions into evidence during the party's case-in-chief shall prepare and file with the Court and copy to all opposing parties either:
 - a. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading

depositions in a question and answer format, this is strongly encouraged.); or

b. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.

5. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).
6. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.

B. ONE WEEK BEFORE THE FINAL PRE-TRIAL CONFERENCE, the parties shall:

1. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.
2. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.
3. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.
4. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

IX. Other Matters

None.

Respectfully submitted this 9th day of October, 2003,

On behalf of the United States of America:

s/ *Benjamin Blustein*

Benjamin Blustein [DC Bar # 418930]
Sara R. Lewenberg [Mass Bar No. 634257]
Attorneys
U.S. Department of Justice
Civil Rights Division, Employment Litigation Sectn.
950 Pennsylvania Avenue, N.W.
Patrick Henry Building, Room 4908
Washington, D.C. 20530
Benjamin.Blustein@usdoj.gov
Telephone: (202) 514-4073
Facsimile: (202) 514-1005

On behalf of the Town of West Terre Haute:

MILLER CARSON BOXBERGER & MURPHY

³

Edward J. Liptak, Esq./#9821-02
3100 John Hinkle Place, Ste. 106
Bloomington, IN 47408
Telephone: (812) 333-1225
Facsimile: (812) 333-1925

³ On October 8, 2003, counsel for Defendant represented its consent to the filing of this Case Management Plan.

Attachment A

PROPOSED DEADLINES

<u>Event</u>	<u>Pl.'s Proposed Date</u>	<u>Def.'s Proposed Date</u>
Initial Disclosures (FRCP 26)	October 11, 2003	October 11, 2003
Pl.'s Preliminary Witness & Exhibit Lists	November 11, 2003	November 11, 2003
Def.'s Preliminary Witness & Exhibit Lists	December 11, 2003	December 11, 2003
Mot. for Leave to Amend Pleadings and/or Join Parties	November 11, 2003	November 11, 2003
Pl.'s Statement of Special Damages & Settlement Demand	November 11, 2003	November 11, 2003
Pl.'s Expert Witness Disclosures	January 11, 2004	August 11, 2004
Def.'s Expert Witness Disclosures	February 11, 2004	September 11, 2004
Final Witness & Exhibit Lists	February 11, 2004	September 11, 2004
Non-Expert Witness Discovery Deadline	March 30, 2004	May 11, 2004
Expert Witness Discovery Deadline	March 30, 2004	November 11, 2004
Dispositive Motions Deadline	January 11, 2004	June 11, 2004
Trial Date	May 2004	January 2005

_____ PARTIES APPEARED IN PERSON/BY COUNSEL ON _____
FOR A PRETRIAL/STATUS CONFERENCE.

_____ APPROVED AS SUBMITTED.

_____ APPROVED AS AMENDED.

_____ APPROVED AS AMENDED PER SEPARATE ORDER.

_____ APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE
SHORTENED/LENGTHENED BY _____ MONTHS.

_____ APPROVED, BUT THE DEADLINES SET IN SECTION(S)
_____ OF THE PLAN IS/ARE
SHORTENED/LENGTHENED BY _____ MONTHS.

_____ THIS MATTER IS SET FOR TRIAL BY _____ ON _____
_____. FINAL PRETRIAL CONFERENCE
IS SCHEDULED FOR _____
AT _____ .M., ROOM _____.

_____ A SETTLEMENT/STATUS CONFERENCE IS SET IN THIS CASE
FOR _____ AT _____ .M. COUNSEL
SHALL APPEAR:

_____ IN PERSON IN ROOM _____; OR

_____ BY TELEPHONE, WITH COUNSEL FOR
_____ INITIATING THE CALL TO ALL OTHER
PARTIES AND ADDING THE COURT JUDGE AT (____)
_____.

_____ BY TELEPHONE, WITH COUNSEL CALLING THE
JUDGE'S STAFF AT (____) _____.

_____ DISPOSITIVE MOTIONS SHALL BE FILED NO LATER THAN _____

Date

U. S. District Court
Southern District of Indiana

Form Approved
June 2003

Certificate of Service

I hereby certify that on October 9, 2003, a copy of the foregoing Case Management Plan was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Plaintiff United States of America

I hereby certify that on October 9, 2003, a copy of the foregoing Case Management Plan was mailed, by first class mail, postage prepaid and properly addressed to the following:

Edward J. Liptak, Esq.
Miller Carson Boxberger & Murphy, LLP
3100 John Hinkle Place, Ste. 106
Bloomington, IN 47408

s/ *Benjamin Blustein*

Benjamin Blustein [DC Bar # 418930]
Attorney
U.S. Department of Justice
Civil Rights Division, Employment Litigation Sectn.
950 Pennsylvania Avenue, N.W.
Patrick Henry Building, Room 4908
Washington, D.C. 20530
Benjamin.Blustein@usdoj.gov
Telephone: (202) 514-4073
Facsimile: (202) 514-1005